



## Filing Receipt

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**APPLICATION OF GRID  
UNITED TEXAS LLC FOR  
PARTIAL CERTIFICATE OF  
CONVENIENCE AND  
NECESSITY RIGHTS PURSUANT  
TO PURA §§ 37.051(C-1) AND  
37.056(B)(2) TO INTERCONNECT  
AN HVDC FACILITY TO THE  
ERCOT TRANSMISSION GRID**

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**PUBLIC UTILITY COMMISSION  
OF TEXAS**

**TEXAS INDUSTRIAL ENERGY CONSUMERS' REPLY IN OPPOSITION  
TO GRID UNITED'S MOTION TO ABATE**

**I. INTRODUCTION**

Texas Industrial Energy Consumers (TIEC) opposes Grid United Texas, LLC's (Grid United's) eleventh hour motion to abate this proceeding. It is apparent that Grid United is attempting to buy time to supplement its Application to avoid what it expects will be one or more adverse rulings on the threshold legal issues that the parties have spent the last few weeks briefing. Rather than abating this proceeding, the Commission should consider the threshold legal issues and issue a Preliminary Order. Then, if the Commission determines that Grid United's Application is deficient and should be dismissed, Grid United will have the benefit of knowing what the applicable law is when determining whether and how to file a new, more comprehensive CCN application.

Critically, the Commission should be careful to ensure that Grid United cannot use abatement as a delaying tactic to keep its Application pending until it can seek approvals from FERC—approvals that, if granted, could potentially eviscerate the Commission's ability to fully review Grid United's requested interconnection (the "Proposed Interconnection"). As discussed below, once Grid United's Application has been pending for 180 days, it will have the option of requesting approvals for the Proposed Interconnection from FERC.<sup>1</sup> Then, if FERC orders the interconnection, that order could potentially be used to preclude the Commission from conducting

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<sup>1</sup> See PURA § 37.051(c-1) ("The person must apply for the certificate *not later than the 180th day before the date the person seeks any order from the Federal Energy Regulatory Commission* related to the interconnection.") (emphasis added).

a full public interest review. The Commission has two options to prevent this from happening. First, it could take up the threshold issues and find that Grid United's current Application is deficient, such that the Application did not start the 180 day clock in PURA § 37.051(c-1). Alternatively, the Commission could grant Grid United's requested abatement, but require Grid United to commit that it will not request approvals from FERC until at least 180 days after it amends its Application.

## **II. REPLY IN OPPOSITION TO MOTION TO ABATE**

### **A. The Commission should address the threshold legal issues that the parties have already briefed rather than abating this proceeding and potentially running into the same issues again in the future.**

Grid United filed its Application nearly six months ago, and it has been clear from the start of this proceeding that there were serious questions regarding (1) whether Grid United is eligible to receive the CCN it has requested and (2) whether the Application includes sufficient information for the Commission to issue that CCN. Now, after the parties have spent weeks briefing threshold legal issues related to the viability and sufficiency of Grid United's Application, and just before the Commission is slated to take up those issues, Grid United has asked for this proceeding to be abated so it can modify its Application in some unspecified way. But that request comes far too late. The Commission should reject Grid United's request for abatement, take up the threshold legal issues that the parties have already briefed, and issue a Preliminary Order finding that Grid United's Application is deficient and should be dismissed. Then, should Grid United choose to re-file its Application, it can do so with the benefit of the Commission's guidance on those threshold legal issues, which will give it a better chance of presenting a complete and viable CCN application on its second try.

### **B. The Commission should ensure that Grid United cannot seek FERC approvals based on its current Application.**

Abating this proceeding could potentially lead to the Commission forfeiting its ability to meaningfully review many aspects of the Proposed Interconnection. PURA § 37.051(c-1) requires Grid United to hold off on seeking a FERC order with respect to the Proposed Interconnection until its CCN application has been on file with this Commission for at least 180 days. Based on when Grid United filed its Application, that deadline falls in early January of 2023. Critically, *Grid United's request for abatement is silent with respect to whether Grid United intends to*

*proceed with a filing at FERC while this case is abated.* This is concerning because the Supremacy Clause of the U.S. Constitution would likely preempt the Commission from coming to any conclusions that contradict a FERC order, and as the Commission has previously found,<sup>2</sup> FERC’s review of DC tie interconnections under the Federal Power Act overlaps with many of the factors to be considered under PURA §§ 37.051(a) and 37.051(c-1), including public interest,<sup>3</sup> need, the adequacy of existing service, and the impact of the Proposed Interconnection on neighboring utilities.<sup>4</sup> Accordingly, if the Commission abates this proceeding, it should be careful to do so in a way that ensures that it will retain its authority to review the Proposed Interconnection.

As noted above, TIEC believes there are two potential paths the Commission could take to protect its ability to review the Proposed Interconnection. First, it could take up the threshold issues and find that Grid United’s current Application is deficient, such that the Application did not start the 180 day clock in PURA § 37.051(c-1) and will not start that clock until it is amended and the Commission deems that it is sufficient to allow a meaningful review of the Proposed Interconnection. Alternatively, the Commission could grant Grid United’s requested abatement without making any findings on the sufficiency of the current Application, but require Grid United to commit that it will not request approvals from FERC until at least 180 days after it modifies its Application.

### III. CONCLUSION

As explained above, the Commission should deny Grid United’s request for abatement, take up the threshold legal issues that have already been briefed, and issue an order dismissing Grid United’s Application. Additionally, the Commission should take whatever action is necessary to preserve its ability to fully review Grid United’s Application, and should take steps

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<sup>2</sup> See Docket No. 11270, Order at 12, CoL 5 (March 25, 1993) (“By issuing the original FERC orders, as modified by the East Tie Order under §§ 201(b)(2), 202, 210, 211, and 212 of the Federal Power Act, . . . the *FERC has concluded that the proposed facilities are needed, existing service is inadequate, and construction of the proposed facilities will have a minimal impact on neighboring utilities* as required by PURA §54(b) and (c). *An application of PURA §54(b) or (c) by the Commission that results in a different conclusion is preempted by the supremacy clause of the United States Constitution.* U.S. Const. art. VI, cl. 2.”) (emphases added).

<sup>3</sup> See 16 U.S.C. § 824a(b).

<sup>4</sup> See Docket No. 11270, Order at 12, CoL 5.

to prevent Grid United from using abatement as a delaying tactic to get around the Commission's public interest review by seeking approvals from FERC.

Respectfully submitted,

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**ATTORNEYS FOR TEXAS INDUSTRIAL  
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**CERTIFICATE OF SERVICE**

I, John R. Hubbard, Attorney for TIEC, hereby certify that a copy of this document was served on all parties of record in this proceeding on this 2nd day of December, 2022 by electronic mail, facsimile, and/or First Class, U.S. Mail, Postage Prepaid.

/s/ John R. Hubbard

John R. Hubbard